

**Testimony of Barry J. Trilling, Partner, Wiggin and Dana, LLP, Stamford, CT on
“The Connecticut Experience: What Can be Done to Spur Brownfield Redevelopment
Along America’s New England Corridor?”
Before the U.S. House of Representatives Committee on Government Reform,
Subcommittee on Federalism and the Census**

**March 13, 2006
Bridgeport, Connecticut**

Thank you Mr. Chairman and members of the Subcommittee for providing this opportunity to present the views of a “brownfields practitioner” on the subject of creating incentives for the cleanup and redevelopment of New England’s contaminated properties. I am Barry Trilling, a partner in the Stamford, Connecticut office of Wiggin and Dana, a law firm serving Connecticut for more than 70 years. I work both in Connecticut and elsewhere in the country on the redevelopment of properties challenged by environmental contamination.

A cradle of manufacturing and industry, Connecticut serves as home to a significant number of abandoned or partially used industrial properties. Plagued or stigmatized by either real or perceived environmental contamination, these legacy properties constitute Connecticut’s “brownfields.” Factories and mills that once made clocks, pins, thread, hats, buggies, guns, military ordnance, metal products, aerospace components, and other products in plants throughout the state now lay idle and unused, suffering from the specter of environmental contamination. The redevelopment of these brownfield properties not only presents a significant economic opportunity for private developers, but also serves important public functions, including expanding the State’s economic base, revitalizing towns and cities, reducing suburban “sprawl,” and leaving prized undeveloped “greenfields” undisturbed.

I approach problems of brownfields development in Connecticut from my experience working to clean up contaminated properties since the mid-’70s when I was an attorney at the U.S. Justice Department supervising the Love Canal litigation and from my more than 13 years in Pittsburgh, Pennsylvania, working to clean up and redevelop contaminated sites in that Rust Belt state. I also speak from the perspective I’ve gained from my almost 15 years of membership in the National Association of Industrial and Office Properties (NAIOP), a 13,000 member organization made up primarily of the owners and developers of commercial and industrial properties, and from my having chaired NAIOP’s national environmental committee. I had the privilege to present testimony on behalf of NAIOP to other congressional committees with regard to brownfields legislation and to serve as NAIOP’s representative on a Federal Advisory Committee Act committee convened by the U.S. Environmental Protection Agency (“U.S. EPA”) to negotiate rules governing the standards of appropriate inquiry for innocent purchasers of contaminated properties. I also currently serve as the Chair of the Legislation and Policy Committee of the Connecticut Chapter of the National Brownfields Association.

Here in Connecticut we have experienced many significant successes in brownfields development. These include the North Colony Street Industrial Park in Meriden, winner of the prestigious Phoenix Award from the U.S. EPA for reclaiming more than 15 acres in an industrial brownfield; the Harbor Yard development in Bridgeport that resulted in the cleanup of soils and groundwater that contained metals, solvents, and other dangerous substances, and the creation of a job and revenue creating Ballpark and Arena at Harbor Yard; and Adriean's Landing, a significant redevelopment of approximately 47 brownfield acres in downtown Hartford. Other major projects "in the works" include the Georgetown project in Redding in which a "new urbanist" community will be built on the site of the remediated Gilbert and Bennett wire mill, and the Fairfield Metro Center which will house a new train station and retail complex on an old industrial site. Although these success stories of large projects garner a lot of media attention, hundreds (and perhaps thousands) of smaller commercial and real estate projects that would result in the cleanup and reuse of contaminated properties cannot go forward because of bureaucratic and financial barriers, as I will describe in more detail below.

Every state in the Union has adopted some form of brownfields remediation and development program. In addition, the federal government has recognized the importance of brownfields revitalization through more than 20 programs administered by various agencies. These include the U.S. EPA, the federal Department of Housing and Urban Development, the Economic Development Administration of the U.S. Department of Commerce, the Army Corps of Engineers, the Small Business Administration, and even the U.S. Department of Agriculture. This panoply of programs demonstrates the federal government's recognition of the importance of brownfields cleanup and revitalization.

Most obviously, these programs hope to achieve environmental cleanup and protection of public health. They also restore jobs and a tax base to struggling cities. This combination of desirable effects in turn discourages suburban sprawl and the destruction of greenfields and makes cities more livable and desirable places to inhabit. But most important to me, and unquantifiable, these programs restore hope to the people who live in the communities experiencing the cleanup and reawakening of their formerly contaminated and idle sites.

To assure that the emergence of state and federal brownfields revitalization programs has a real and palpable effect, however, both federal and state environmental enforcement agencies must adjust their cultures in order to welcome and nurture private sector efforts to clean up these properties. In particular, these agencies need to abandon "command and control" micro-management and an attitude of suspicion and cynicism.

We have seen a "sea change" in the attitude of agencies in many states, such as in Pennsylvania, where the Department of Environmental Protection serves as a key member on "Brownfield Action Teams." Here in Connecticut, Department of Environmental Protection Commissioner Gina McCarthy is working to make her agency more "user friendly" for parties who wish to clean up and revitalize brownfield properties and has appointed a Brownfields Coordinator to take personal responsibility for facilitation of those efforts.

Similarly on the federal level, EPA has provided resources for brownfields revitalization in each of its regions and has entered into memoranda of understanding with various states to defer federal enforcement where state agencies take the lead in supervising the cleanup of properties. I am pleased to report that tomorrow, March 14, 2006, the National Brownfields Association, in conjunction with NAIOP, will convene a “TriState Brownfields Best Practices” Conference at the Graduate Center of the City University of New York in Manhattan. At this conference, brownfields stakeholders from Connecticut, New York, and New Jersey, along with state and federal regulators, will discuss the change in government attitude needed to achieve successful brownfields revitalization.

Much more needs to be done, notwithstanding the progress we have experienced, particularly since enactment of the Small Business Liability Relief and Brownfields Revitalization Act of 2002, which provided much needed relief for innocent purchasers of contaminated properties and increased funding for brownfields cleanup. Of paramount importance are financial incentives and the availability of insurance products for smaller brownfield properties to enable them to compete with pristine sites for development.

Brownfields raise issues with regard to contamination, government regulation, and community relations, among other concerns, which greenfields do not. It thus comes as no surprise that programs designed specifically for use at brownfields address financial requirements unique to these properties. Properties not stigmatized by real or perceived contamination do not require the expense of undertaking invasive site assessments, preparing remedial plans, implementing cleanup, and obtaining insurance against residual environmental liabilities. In addition, the cost of financing brownfields commonly exceeds that for other sites because investors and lenders believe they assume a higher risk which justifies a higher return. Hence, lenders commonly require at least a 25% equity investment in a brownfields project.

Recognizing the need to “level the playing field” for brownfields, both the State of Connecticut and the United States government offer grant and loan programs for brownfields site assessment, remediation, and development. These include programs administered by the Connecticut Brownfields Redevelopment Authority (CBRA) and the Connecticut Department of Economic and Community Development (DECD), as well as the federal agencies I have already mentioned. The DECD administers programs for the enhancement and development of communities, business, and housing, including federally funded Community Block Grant Programs which developers can use for brownfields revitalization. The CBRA’s programs target for-profit owners and developers. Most federal funding sources, however, limit eligibility to municipalities, quasi-governmental organizations, and, on occasion, non-profit entities. For-profit entities sometimes can apply for federal funding as subgrantees, but only if local and state governments or governmental organizations manage and distribute the funds as subgrants.

These governmental programs often create bureaucratic mazes that real estate developers would rather avoid. Also, as one might expect, these programs may suffer from difficult local political pressures, which may carry more weight than the environmental and redevelopment merits of a project. Further, developers often must surmount barriers erected by and between governmental agencies with sometimes conflicting and overlapping responsibilities. The Commonwealth of Pennsylvania has tried to address these problems with its Brownfield Action Teams. In

Connecticut, we've begun to confront these difficulties with the creation of the Nutmeg Coalition, an organization made up of DEP, DECD, CBRA, and our Homeland Security Agency. Legislation has also been introduced in our General Assembly to create a "one stop shop" for brownfields remediation and development.

Compounding the problem, smaller brownfield sites with lower levels of contamination face difficulty in obtaining environmental insurance: the premiums on smaller cleanups are disproportionately large and frequently unaffordable in the context of a project. Our Connecticut Chapter of the National Brownfields Association currently is exploring ways to make insurance more affordable for these sites.

Regardless of what we do to make governmental agencies more efficient, productive, and user-friendly for brownfield revitalization projects, the best way to clean up and redevelop contaminated properties is to unleash the creative energies and abilities of the private sector. If an entrepreneur could make as much or more money cleaning up and developing a contaminated property as he or she could on a greenfield, we would see more brownfields development and fewer public dollars spent on these activities. Legislation such as "America's Brownfield Cleanup Act," H.R. 4480, constitutes a positive step in this direction.

As currently worded, the bill's proposed Brownfields Tax Credit Program would provide tax credits for up to 50% of demolition and remediation costs incurred pursuant to an approved remediation plan. ***I respectfully suggest that adding language to extend the tax credit to include insurance costs would contribute to overcoming the difficulty of obtaining insurance for smaller sites.*** Developers could sell these transferable credits to third parties, including banks, resulting in the creation of a "secondary" market in brownfields development. The bill's allocation of credits to states on the basis of population assures equity in the program's implementation. In sum, the tax credits would generate capital toward project costs, stimulate private investment, and result in a cleaner environment.

H.R. 4480, or similar legislation, would go a long way to encourage private sector developers to take up brownfields revitalization projects by providing incentives that other, more traditional forms of financing cannot match. In this way, the bill directs private conduct to achieve the public good.

I suggested earlier that the failure to develop brownfields does not garner media attention. I'll limit myself to two examples where H.R. 4480 would have made a difference. I represented the nearly bankrupt owner of a defunct metals finishing business with a building that lay idle atop real estate burdened with historical contamination. We tried to sell the property, but it needed about \$150,000 in environmental remediation. Although we had several prospective buyers for this approximately one million dollar transaction, the cost of remediation and environmental insurance proved too high and the property remains on the market, awaiting cleanup and development. In another instance I represent a business that wants to relocate its industrial operation within the urban neighborhood it has occupied for about 50 years. It found a suitable property, a former munitions plant that had been idle for several years, for which it was willing to pay more than one million dollars. Potential cleanup liability that could amount to more than \$300,000 due to the property's former munitions manufacturing activities, scuttled the

transaction, and my client was forced to look elsewhere. In both of these transactions, if the provisions of H.R. 4480 had been in effect and the tax credits available, I can say with a high level of confidence that the parties would likely have consummated these deals, resulting in *privately-financed* environmental remediation, the creation of jobs, and the extension of each community's tax base.

Thank you once again for the opportunity to present these remarks

***(To obtain further information on brownfields revitalization in Connecticut, please see “The Wiggin and Dana Manual on Legislative, Regulatory, and Financial Assistance Tools for Brownfields Development in Connecticut,” which can be found at:
http://www.wiggin.com/pubs/articles_abstract.asp?ID=933337142004.)***

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